

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

PALMER/KANE LLC,

Plaintiff,

v.

BEHRMAN HOUSE, INC.,

Defendant.

Case No.

Judge

COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff, PLAMERKANE LLC, by and through its undersigned counsel, for its Complaint against Defendant BEHRMAN HOUSE, INC., allege as follows:

JURISDICTION AND VENUE

1. This is an action for copyright infringement by reason of Defendant's infringing uses of Plaintiff's copyrighted photographs.
2. This Court possesses subject matter jurisdiction over this action pursuant to the provisions of 28 U.S.C. Sections 1331 and 1338(a), because this action arises under the Copyright Act of 1976, 17 U.S.C. Sections 101 et seq.
3. This Court possesses general personal jurisdiction over the Defendant, Behrman House, Inc. pursuant to N.Y. C.P.L.R. § 301, because it is engaged in such continuous and systematic course of "doing business" in New York as to warrant finding it "present" in the jurisdiction. In addition, this Court possesses personal jurisdiction over Defendant Behrman House, Inc., pursuant to N.Y. C.P.L.R. § 302(a)(1), because the Defendant transacts business within this state, including in this judicial district, and contracts to supply goods or services in the state, including in this judicial district. On information and belief, Defendant Behrman House, Inc. sells and distributes its

publications via its employees and agents in New York and throughout the United States, including publications that are at issue in this action, in which the Plaintiff's photographs are unlawfully reproduced.

4. Venue is proper in this District under 28 U.S.C. Sections 1391(a) and (b) and 1400(a), since Defendant resides or may be found in this District and a substantial portion of the misconduct by Defendant here alleged occurred in this District.

THE PARTIES

5. Gabe Palmer, a resident of the State of Connecticut, is a professional photographer who makes his living taking and licensing photographs.

6. Plaintiff, Palmer/Kane LLC ("Palmer/Kane"), is a Vermont limited liability corporation with a place of business at 77 Soundridge Road, Shelton, Connecticut 06484.

7. Gabe Palmer created the photographs, listed in Table 1 below as Images 1-10, as works-made-for-hire for Plaintiff, Palmer/Kane LLC or its predecessor, Palmer/Kane, Inc. (collectively "Palmer/Kane").

8. Palmer/Kane is a stock photography production company that produces commercial imagery licensed through agencies such as Corbis Corporation ("Corbis"), Getty Images, Inc. ("Getty Images") and Alamy Ltd. ("Alamy") and occasionally directly to the end user. Palmer/Kane has been in business for 40 years. Over the last 20 years, Palmer/Kane has issued, through its agents, over 5,000 licenses for book use through The Stock Market ("TSM") and Corbis, some of them to Defendant Behrman House, Inc.

9. On information and belief, defendant Behrman House, Inc. (“Behrman”) is a New Jersey corporation with its principal place of business at 11 Edison Pl, Springfield Township, NJ 07081.

10. On information and belief, Behrman is a publishing company in the business of creating and publishing educational textbooks and materials for the Jewish Religious Education market.

FACTS

11. Palmer/Kane is the copyright owner of all images produced by Gabe Palmer as works for hire, and bearing the credit Gabe Palmer, Palmer Kane, or the brand name “Mug Shots” or (sic) “Mugshots.” This includes the photographs of Gabe Palmer that are named, depicted and described in Table 1 and in Exhibit A hereto.

12. Palmer/Kane LLC acquired the rights to all Palmer/Kane Inc. copyright registrations by written agreement.

13. Though Palmer/Kane authorized third parties to issue licenses for limited uses of Palmer/Kane’s images, Palmer/Kane at all times retained ownership of the copyrights and complete legal title in the images.

14. On information and belief, it is the standard practice in the stock photography licensing business to negotiate the fee and all the terms of license prior to the actual publication of the image.

15. On information and belief, any images licensed issued by, or on behalf of, the Plaintiff to Behrman House were limited licenses under the “rights management” model of licensing which specifies the print number, media, size and placement,

geographic distribution, language, term, and other restrictions pertaining to the image usage. The licensing fee charged reflects those limitations.

Copyright Infringement by Behrman House

16. On information and belief, Behrman has used Plaintiff's images without permission in the five publications accused herein: "My Jewish Year," "Let's Celebrate," "Partners with God," "Living as Partners with God," and, "Book of Jewish Holidays." In some cases, no license was ever obtained for use of the image, in others, the limited scope of any licenses that were issued have been grossly exceeded. Any licenses that were obtained were limited licenses that issued over 19 years ago and have never been renewed.

17. Table 1 below identifies the image used, the publication it appears in and the copyright registration infringed.

Table 1

Image No.	Image Title	Accused Publication	USCO Registration
1	"Girls Measuring Height"	"My Jewish Year" "Let's Celebrate"	VA1-787-133
2	"4 th Grade Science Class"	"Partner's with God"	VA1-787-133
3	"Young Musicians"	"Partner's with God"	VAu 529-623
4	"Boy Winning Spelling Bee"	"Partner's with God"	VA1 787-126
5	"Deaf Student Education"	"Living as Partner's with God"	VAu-529-623
6	"Senior Woman with Birthday Cake"	"Living as Partner's with God"	VAu-529-623

7	“Grandfather and Grandson Camping”	“Living as Partner’s with God”	VAu-529-623
8	“Boys Baking a Cake”	“Living as Partner’s with God”	VAu 529-623
9	“Teen and senior Playing Board Game”	“The Book of Jewish Holidays”	VA 1-850-707
10	“Mom and Son Recycling”	“The Book of Jewish Holidays”	VA 1-297-358

“My Jewish Year”

18. The photograph entitled “Girls Measuring Height” shown in Exhibit A as Image No. 1 was registered under Certificate of Registration No. VA1-787-133. The photograph appears in the Behrman House publication “My Jewish Year.” A paperback version of the publication “My Jewish Year” published February 20, 1993 with the ISBN # 9780874415407. Subsequently, a teacher’s guide version of the book published in December 2004 with the ISBN # 9780874415414. On information and belief, Behrman did not obtain any license for the use of Image No. 1 in this publication. On information and belief, the “My Jewish Year” publication is currently available for purchase from Behrman. Also on information and belief, Behrman’s use of Palmer/Kane’s photograph, Image No. 1, in this publication is unlicensed and therefore infringing.

“Let’s Celebrate”

19. The photograph entitled “Girls Measuring Height” shown in Exhibit A as Image No. 1 (and Exhibit A at 2) also appears in Behrman’s publication “Let’s Celebrate.” On information and belief, the “Let’s Celebrate” publication is currently

available for purchase from Behrman. Also on information and belief, Behrman's use of Palmer/Kane's photograph, Image No. 1, in this publication is unlicensed and therefore infringing.

"Partners with God"

20. The photograph entitled "Science Class," Image No. 2 (shown in Exhibit A at 3), was registered under Certificate of Registration No. VA 1-787-113. The photograph entitled "Young Musicians," Image No. 3 (shown in Exhibit A at 4), was registered under Certificate of Registration No. VAu 529-623. The photograph entitled "Spelling Bee Winner," Image No. 4 (shown in Exhibit A at 5), was registered under Certificate of Registration No. VA 1-787-126. All three photographs appear in the Behrman publication "Partners with God," a text book that is currently available for purchase from Behrman. On information and belief, the publication "Partners with God" is available internationally, as well as in the United States. Also on information and belief, Behrman's use of Palmer/Kane's photographs, Image No.'s 2, 3 and 4 in the publication, "Partner's with God," is unlicensed and therefore infringing.

"Living as Partners with God"

21. The photograph entitled "Deaf Student Education" Image No. 5 (shown in Exhibit A at 6), was registered under Certificate of Registration No. VAu 529-623. The photograph entitled "Senior Woman with Birthday Cake" Image No. 6 (shown in Exhibit A at 7), was registered under Certificate of Registration No. VAu 529-623. The photograph entitled "Grandfather and Grandson Camping" Image No. 7 (shown in Exhibit A at 8), was registered under Certificate of Registration No. VAu 529-623. The

photograph entitled “Boys Baking a Cake” Image No. 8 (shown in Exhibit A at 9), was registered under Certificate of Registration No. VAu 529-623. All four photographs appear in the Behrman publication “Living as Partners with God,” currently available for purchase from Behrman. On information and belief, the Behrman House publication “Living as Partners with God” is available internationally, as well as in the United States. On information and belief, Behrman’s use of Palmer/Kane’s photographs, Image No.’s 5, 6, 7 and 8 in the publication, “Living as Partner’s with God,” is unlicensed and therefore infringing.

“The Book of Jewish Holidays”

22. The photograph entitled “Senior Woman and Teen Playing Game” Image No. 9 (shown in Exhibit A at 10), was registered under Certificate of Registration No. VA 1-850-707. The photograph entitled “Mom and Son Recycling” Image No.10 (shown in Exhibit A at 11), was registered under Certificate of Registration No. VA 1-297-358. Both photographs appear in the Behrman publication “The Book of Jewish Holidays,” which is currently is available for purchase from Behrman. On information and belief, the publication “Book of Jewish Holidays” is available internationally, as well as in the United States. On information and belief, Behrman’s use of Palmer/Kane’s photographs, Image No.’s 9 and 10, in the publication, “Book of Jewish Holidays,” is unlicensed and therefore infringing.

COUNT I

(COPYRIGHT INFRINGEMENT)

23. Palmer/Kane repeats and re-alleges each allegation set forth above in paragraphs 1-22.

24. Palmer/Kane is the sole proprietor of all rights, title and interest in and to the copyright of each of the photographs described and alleged above and in Exhibit A that have been registered with the United States Office of Copyright pursuant to 17 U.S.C.A. § 411(a).

25. Each of said photographs contains material wholly original to Palmer/Kane and is copyrightable subject matter under the laws of the United States.

26. Behrman House infringed Palmer/Kane's copyrights, in violation of the Copyright Act, 17 U.S.C. §101 et seq., by knowingly and willfully publishing said photographs without the consent or authorization of Palmer/Kane.

27. Behrman House's infringements were intentional, willful, reckless and/or malicious.

28. Behrman House's unauthorized and infringing conduct caused Palmer/Kane significant injuries, damages, and losses in amounts to be determined at trial.

29. Palmer/Kane seeks all damages recoverable under any applicable agreements and/or the Copyright Act, including statutory or actual damages and Behrman House's profits attributable to the infringing use of Palmer/Kane's creative works and the damages suffered as a result of the lack of compensation, credit and attribution. Palmer/Kane also seeks all attorneys' fees and any other costs incurred in connection with this lawsuit.

30. As a result of the above alleged infringements, Palmer/Kane has suffered and continues to suffer irreparable harm for which damages may be insufficient.

JURY TRIAL DEMAND

31. Pursuant to Fed. R. Civ. P. 38, Palmer/Kane hereby demands a trial by jury of all issues so triable in this matter.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Palmer/Kane requests that this Court enter judgment in its favor and providing the following relief:

- A. Entry of a preliminary and permanent injunction against Behrman House and anyone working in concert with Behrman House from copying, displaying, distributing, advertising, promoting, selling or offering to sell Palmer/Kane's photographs, or creating, obtaining, and using substantially similar photographs, and requiring Behrman House to deliver to the Court for destruction or other appropriate disposition all materials representing Palmer/Kane's photographs, including digital files representing Palmer/Kane's photographs, in the control or possession of Behrman House;
- B. An award to Palmer/Kane of all damages allowable under the Copyright Act, including, but not limited to, statutory and/or actual damages, including damages incurred as a result of Palmer/Kane's loss of licensing revenue, and Behrman House's profits attributable to the above-alleged infringements, as well as damages suffered by Palmer/Kane as a result of the lack of credit and attribution;

- C. An award of Palmer/Kane's full costs, including litigation expenses, expert witness fees, interest, and any other amounts authorized by law, and attorneys' fees incurred in connection with this lawsuit;
- D. An award of punitive and/or exemplary damages and any other relief authorized by law; and
- E. Such other and further relief as this Court deems just and proper.

Dated: January 29, 16

Respectfully submitted:

PALMER/KANE LLC,
By its attorneys,

/s/ Veronica M. Muñoz
Veronica Mullally Muñoz(MM-9985)
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